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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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8 UNITED STATES OF AMERICA,  
9 Plaintiff,  
10 v.  
11 CLIFFORD DURHAM,  
12 Defendant.

No. CR 06-00326 SI

**ORDER DENYING DEFENDANT'S  
MOTION TO FILE JUDICIAL RECORD  
UNDER SEAL**

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14 On June 18, 2012, defendant Clifford Durham submitted to the Court a "Motion to (Temporarily)  
15 File Judicial Record Under Seal." *See* Dkt. 60. Durham was sentenced on September 21, 2007 to 120  
16 months in prison for possessing child pornography in violation of 18 U.S.C. § 2252(a)(4)(B). In his  
17 motion, Durham informs the Court that he is currently incarcerated at FCI Big Spring in Big Spring,  
18 Texas, a low security facility. Durham argues that he faces a heightened risk of violence due to the  
19 nature of his conviction. He moves the Court to seal his judicial record until his release, particularly  
20 a July 24, 2006 Order Denying Defendant's Motion for Revocation of Detention currently published  
21 on the LexisNexis website (and available to other inmates) at *United States v. Durham*, 2006 U.S. Dist.  
22 LEXIS 55860 (N.D. Cal. 2006).

23 The Ninth Circuit has addressed whether orders issued in cases involving sex offenders should  
24 be filed under seal based on the defendant's fear of violence while incarcerated. *See United States v.*  
25 *Stoterau*, 524 F.3d 998, 1012-13 (9th Cir. 2008). The Ninth Circuit recognized the "fundamental  
26 importance of issuing public decisions after public arguments based on public records," and stated that  
27 "any step that withdraws an element of the judicial process from public view makes the ensuing decision  
28 look more like fiat, which requires compelling justification." *Id.* Noting the defendant's concern was

1 "equally present for all similarly situated sex offenders who face prison sentences," the court found that  
2 the circumstances were not "sufficiently exceptional" to warrant sealing. *Id.* The court also denied on  
3 the same grounds the defendant's motion to use a pseudonym. *Id.*

4 That holding controls here. Durham's circumstances are not sufficiently exceptional to warrant  
5 the sealing of his records. The Court notes, however, that prison officials must ensure the safety of  
6 inmates. *See Farmer v. Brennan*, 511 U.S. 825, 832-33 (1994). Pursuant to 42 U.S.C. § 1983, under  
7 certain circumstances, prison officials may be held liable for harm sustained by inmates. *Id.* ("A prison  
8 official's deliberate indifference to a substantial risk of serious harm to an inmate violates the Eighth  
9 Amendment.").

10 Defendant's motion is DENIED.

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**IT IS SO ORDERED.**

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Dated: July 5, 2012

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SUSAN ILLSTON  
United States District Judge